

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXXX**

**Petitioner**

**File No. 123252-001**

**v**

**Blue Cross Blue Shield of Michigan**

**Respondent**

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**Issued and entered**  
**this 4<sup>th</sup> day of January 2012**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On September 7, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on September 14, 2011.

The Petitioner receives prescription drug coverage under a certificate of coverage issued by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on September 23, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner was diagnosed with prostate cancer and underwent a robotic prostatectomy. As a result, he suffers from erectile dysfunction. As a part of his rehabilitation, his physician prescribed Viagra to be used daily. BCBSM denied coverage for dosages in excess of 12 per month or 36 in a 90-day period.

The Petitioner appealed BCBSM's determination through its internal grievance process. BCBSM held a managerial-level conference on July 7, 2011, and issued a final adverse determination dated July 19, 2011, upholding its denial.

### **III. ISSUE**

Is BCBSM required to provide coverage for Petitioner's full Viagra prescription under the terms of the certificate?

### **IV. ANALYSIS**

#### **Petitioner's Argument**

The Petitioner believes that the Viagra prescription should be covered by BCBSM because of medical necessity. The Petitioner's physician explained why he prescribed the Viagra:

Our patient and your insured is recovering from a Robotic Prostatectomy, a procedure that has become standard therapy to remove a cancerous prostate. Yet even with robotic technology, the nerve tissues responsible for erectile function are traumatized in surgery and take time to recover. One primary goal for patients recovering from robotic prostatectomy is regaining pre-operative sexual function. To achieve this goal, atrophy, fibrosis and penile shrinkage caused by lingering surgical neuropraxia can be prevented with ongoing treatment in the form of erectile rehabilitation;

\* \* \*

Specifically, we are requesting that you immediately authorize the regimen of pharmacological care (e.g. Viagra) aimed at stimulating the nerve tissues responsible for erections and increasing blood flow to penile tissues until the neuropraxia has resolved and natural sexual function is restored.

\* \* \*

I am prescribing daily PDE-5 inhibitor therapy (e.g. Viagra 100 mg, Cialis, Levitra) for this patient such that use up to 30 pills per month is indicated.

The Petitioner argues that BCBSM should authorize coverage for 30 doses as it did for the first month. The Petitioner and his physician maintain that 30 doses per month are medically necessary for the treatment of his condition.

#### **BCBSM's Argument**

BCBSM's denial of coverage for additional quantities of Viagra is based on the following provision in the certificate under "Section 3: Prescription Drugs Not Covered" (p. 3.1):

We will not pay for the following:

\* \* \*

More than 12 doses of an impotence drug in a 30-day period. If you have a BCBSM mail order drug program, no more than 36 doses in a 90-day period

BCBSM maintains its benefit determination was appropriate.

#### Commissioner's Review

The Petitioner and his physician advance the argument that Viagra is medically necessary. However, the Petitioner's prescription plan limits coverage of drugs for the treatment of erectile dysfunction to 12 doses in a 30-day period when acquired at retail, or 36 doses in a 90-day period when received through mail order regardless of medical necessity. BCBSM is not prohibited from limiting prescription drug coverage even for medically necessary treatment. Neither the certificate nor state law requires BCBSM to cover additional doses. Purchasing additional quantities of the prescribed drug is the Petitioner's responsibility.

The Commissioner finds BCBSM's denial of coverage for additional doses of Viagra is permissible under the terms of the certificate.

#### **V. ORDER**

Blue Cross Blue Shield of Michigan's final adverse determination of July 19, 2011, is upheld. BCBSM is not required to cover Viagra beyond the maximum of 12 doses per month for the Petitioner.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner